

it shall be deemed a waiver of objection by all parties of record. Thereafter on written or oral offer by a party of record, such statement will be admitted into evidence. If cross-examination is requested or objection is filed, as outlined above, the admission of such verified statement will be withheld until the objection has been withdrawn or hearing has been held and decision has been rendered by the presiding examiner. Where objection is filed to the receipt of all or part of a verified statement, all parties of record shall be notified of that as specified in Subsection (11) above, and the basis for the objection shall be stated.

(13) Subsequent procedure. Procedure subsequent to that provided in this modified procedure rule shall be the same as that provided for proceedings not handled under modified procedure.

WAC 480-08-220 BRIEFS

(1) General. Briefs may be filed in any proceeding before the Commission by any interested party, and shall be filed by any party to the proceeding upon the request of the Commission, and within such time as shall be directed by the Commission. The Commission may require the filing of all briefs within three days after the close of the hearing if it considers the proceeding to be such that an order should issue promptly; and in the case of matters requiring an immediate decision, may require the parties, or their counsel, to present their arguments and authority orally at the close of the hearing, instead of by written brief. Briefs should set out the leading facts and conclusion which the evidence tends to prove, and point out the particular evidence relied upon to support such conclusion. Briefs may be printed (size 6½ inches by 8½ inches), otherwise they shall be multilithed, mimeographed, or typewritten (size 8½ inches by 11 inches or 8½ inches by 13 inches), and all copies shall be clearly legible. Three copies of each brief shall be filed with the Commission and copies thereof shall be served on all parties to the case, or their counsel, and proof of such service furnished to the Commission in the manner provided by WAC 480-08-060 (5).

WAC 480-08-230 COMMISSION PROPOSED ORDERS

(1) General. Whenever the Commission issues a proposed order in accordance with the provisions of RCW 34.04.110, the parties of record shall be so notified.

(2) Time for Filing. Exceptions to proposed orders must be filed in triplicate with the secretary of the Commission and one copy must be served upon all other interested parties within twenty (20) days from the date of issuance of said order, unless a different time for filing is designated by the Commission at or following the issuance of the proposed order. Proof of service must be made in accordance with WAC 480-08-060 (5).

(3) **Exceptions—Who May File.** Any party in a contested case, adversely affected by the proposed order entered therein, may file exception thereto.

(4) **Exceptions—Contents.** Exceptions to proposed orders shall be specific and must be stated and numbered separately. Exceptions to findings of fact must be supported by a reference to that page or part of the record or in the alternative by a statement of the evidence relied upon to support the exception, and shall be accompanied by a recommended finding of fact. Exceptions to conclusions of law must be supported by reference to the appropriate statute involved and shall be accompanied by a corrected conclusion of law. When exceptions are taken to conclusions in the summary portion of the proposed order there shall be included a statement showing the legal or factual justification for such exceptions, together with a statement showing how the alleged defect in the summary affects the findings of fact or conclusions of law, or the ultimate decision.

(5) **Replies.** Replies to exceptions must be filed in triplicate with the secretary of the Commission and a copy served upon the excepting party within ten days of the date of service of the exceptions, unless a different time for filing is designated by the Commission.

(6) **Briefs or Written Arguments.** Briefs or written arguments shall be served and filed in the same manner as provided in Subsection (2) and (5). The Commission may in its discretion hear oral arguments at a time and place to be designated by it upon notice to all affected parties.

(7) **Final Order.** After reviewing the exceptions, replies, briefs, oral arguments, if any, and the record or such portions thereof as may be cited by the parties, a majority of the Commission may affirm the proposed order by an appropriate final order, or it may make such changes as it deems necessary in its final order. The statutory time for review proceedings shall not commence until the date of the Commission's final order.

WAC 480-08-240 PROPOSED ORDERS BY EXAMINERS

(1) **General.** WAC 480-08-240 shall apply in any proceeding under RCW Title 81 (Transportation) which has been the subject of a hearing except when

(a) no objection is made to a request on the record by a party or the examiner for omission of Examiner's proposed order; or

(b) the proceeding is a docket hearing under WAC 480-12-295 of the Rules and Regulations Governing Motor Freight Carriers Operating Under Permit adopted by the Commission by General Order M.V. No. 139, effective September 6, 1960, as amended; or

(c) the proceeding involves rule making governed by RCW 34.04.-020; or

(d) the decision is not adverse to any party to the proceeding other than the Commission; or

(e) the Commission finds that due and timely exercise of its functions requires in the public interest the omission of an Examiner's proposed order.

(2) Preparation and service of proposed order. In proceedings covered by (1) the Examiner conducting the hearing, or, when required, such other Examiner as shall be designated by the Commission, shall prepare a proposed order including findings of fact and conclusions of law and the same shall be served upon all parties of record.

(3) Briefs to Examiner. At the conclusion of the hearing the Examiner may provide for the submission of briefs and fix the time to be allotted therefor.

(4) Exceptions--Who may file. Any party of record may file exceptions to the Examiner's proposed order.

(5) Exceptions--Time for Filing. Exceptions to Examiner's proposed order must be filed in triplicate with the Secretary of the Commission and one copy must be served upon all other parties of record or their attorneys within twenty days of the date of service of said proposed order. Proof of service must be made in accordance with WAC 480-08-060 (5).

(6) Exceptions--Contents. Exceptions to Examiner's proposed orders shall be specific and must be stated and numbered separately. Exceptions to findings of fact must be supported by reference to that page or part of the record, or, in the alternative, by a statement of the evidence relied upon to support the exception, and shall be accompanied by a recommended finding of fact. Exceptions to conclusions of law must be supported by reference to the appropriate statute, and/or to the applicable rule and regulation involved and shall be accompanied by a corrected conclusion of law. When exceptions are taken to statements in the summary portion of the proposed order there shall be included a statement showing the legal or factual justification for such exceptions, together with a statement showing how the alleged defect in the summary affects the findings of fact or conclusions of law, or the ultimate order.

(7) Replies--Who may file. Any party of record may file replies to exceptions.

(8) Replies--Time for filing. Replies to exceptions must be filed in triplicate with the secretary of the Commission. One copy shall be served on all other parties of record or their attorney of record within ten days of the date of the service of the exceptions. Proof of service must be made in accordance with WAC 480-08-060 (5).

(9) Replies--Contents. Replies to exceptions shall be specific and must be stated and numbered separately and must be supported by a reference to that page or part of the record, or in the alternative a statement of the evidence, relied upon to support the reply.

(10) Time for Filing--Variance. The Commission may in its discretion, upon notice to the parties, reduce or extend the time for filing exceptions and replies.

(11) Briefs or Written Arguments. Briefs or written arguments shall accompany exceptions and replies.

(12) Oral Argument. The Commission may in its discretion hear oral argument at time and place to be designated by it upon notice to all affected parties.

(13) Final Decision. After reviewing the exceptions, replies, briefs, oral arguments, if any, and the record or such portions thereof as may be cited by the parties, or on its own motion if no exceptions are filed, a majority of the Commission may affirm the Examiner's proposed order by an appropriate order. The statutory time for review proceedings shall not commence until decision and order. The statutory time for review proceedings shall not commence until the date of the Commission's final order.

WAC 480-08-250 REHEARING OR RECONSIDERATION

(1) General. Proceedings shall be subject to rehearing or reconsideration in the manner prescribed by RCW 80.04.165 and RCW 80.04.200, or the equivalent sections of RCW Title 81, and in these and all other cases application for rehearing shall be made by petition verified under oath stating specifically the grounds thereof, and three (3) copies thereof shall be filed with the Commission and a copy thereof shall be served by the petitioner upon all other parties to the proceeding or their attorneys of record, together with proof of service, in accordance with WAC 480-08-060 (5).

(2) Contents. All such petitions for rehearing or reconsideration shall specifically identify each portion or portions of the challenged order which the petitioner deems to be erroneous or incomplete. In addition, such petitions shall cite those portions of the evidence, the laws or rules of the Commission which are relied upon in support of the allegations of the petition.

(3) Amendment or rescission of orders or rules. Under RCW 80.04.-210 and the equivalent section of RCW Title 81, the Commission, upon notice to the public service company or companies affected, and after allowing an opportunity for hearing as in the case of complaints, may amend or rescind any order or rule made, issued or promulgated by it.

WAC 480-08-260 NO DISCUSSION OF PROCEEDING UNTIL DECISION

(1) General. The Commission declares its policy to be that after the filing of a complaint or petition in a contested formal proceeding and prior to the issuance of a final order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the Commissioners, or with the examiner involved, unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference. When, after filing of a complaint or petition and prior to the issuance of a final order thereon, letters are directed to the Commission, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished to the Commission.

WAC 480-08-270 JOINT HEARINGS

(1) General. In any proceeding wherein the Commission participates jointly with the Interstate Commerce Commission or other federal regulatory agency, the rules of practice and procedure of such federal agency shall govern. In any proceeding wherein the Commission participates jointly with an administrative body of another state or states, the rules of the state where the hearing is held shall govern such proceeding, unless otherwise agreed upon by the participating agencies: *Provided*, That any person entitled to appear in a representative capacity before any of the agencies involved in the joint hearing may do so in such joint hearing.

WAC 480-08-280 ADMINISTRATIVE RULINGS

(1) General. Upon the petition of any interested person subject to its jurisdiction, or upon its own motion, the Commission may, when it appears to be in the public interest, make and issue administrative rulings when necessary to terminate a controversy or to remove a substantial uncertainty as to the application of statutes or rules of the Commission.

WAC 480-08-290 SEGREGATION OF FUNCTIONS IN FORMAL PROCEEDINGS

(1) General policy. To the end that only such matters as appear of record at a hearing shall be considered in the determination of a proceeding, segregation, insofar as practicable, shall be made between the work of the investigating and prosecuting staff, and that of Examiners who hold hearings.

WAC 480-08-300 COMPLIANCE WITH ORDERS

(1) Notification to Commission; tariff reference required. When an order has been issued by the Commission any party named therein, who is, by such order, required to do or refrain from doing any act or thing, shall notify the Commission on or before the date upon which compliance with such order is required, whether or not there has been compliance with said order. If such order necessitates a change in rates, the above notification shall be given in addition to the filing of proper tariffs, and shall specify the Commission's numbers of the tariffs so filed.

WAC 480-08-310 COMPUTATION OF TIME

(1) General. The time within which an act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a holiday, Saturday, or Sunday, and then it is excluded from the computation.

WAC 480-08-320 SUSPENSION OF TARIFFS

(1) On complaint or own motion. Except upon its own motion, the Commission shall not suspend, in accordance with the provisions of RCW 80.04.130 and 81.04.130, the operation of any tariff, schedule, classification, rule or regulation filed with the Commission unless a complaint, protest or petition is filed with the Commission at least twelve days prior to the date said tariff, schedule, classification, rule or regulation is to become effective, together with proof of service thereof upon the public service company making such filing, in accordance with WAC 480-08-060 (5): *Provided*, That the Commission may waive, for good cause shown, the requirements as to time for filing and the service of said complaint, protest or petition. The public service company may serve and file an answer to such complaint, protest or petition within seven days after the service of said complaint, protest or petition upon it.

WAC 480-08-330 GENERAL APPLICATION--SPECIAL RULES--EXCEPTIONS--
CANCELLATION OF FORMER RULES

(1) General rules. The rules of practice and procedure of which this is one are for general application to proceedings and hearings before the Commission.

(2) Special rules. Special rules have been adopted and may in the future be adopted applying to certain classes of public service companies or to particular proceedings, and in case such special rules are inconsistent with these general rules, the special rules shall govern.

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(3) Modifications and exceptions. These rules and regulations are subject to such changes, modifications and additions as the Commission from time to time may prescribe, and such exceptions as may be just and reasonable in individual cases as determined by the Commission.

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Chapter 34.04
Revised Code of Washington
ADMINISTRATIVE PROCEDURE ACT

Sections

- 34.04.010 Definitions.
- 34.04.020 Adoption of rules of practice and procedure—Organizational description—Records of decisions, orders and opinions open to public—Exceptions—Effect of failure to comply.
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34.04.010 Definitions. For the purpose of this chapter:

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(2) "Rule" means any agency order, directive or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters or revokes any procedure, practice or requirement relating to agency hearings; (c) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters or revokes any qualifications or standards for the issuance, suspension or revocation of licenses to pursue any commercial activity, trade or profession; or (e) which establishes, alters or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.04.080, as now or hereafter amended, or (iii) speed restrictions for motor vehicles established by the state highway commission.

(3) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law or constitutional right prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 86.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law or agency rules.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any activity, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license. [1967 c 237 § 1; 1959 c 234 § 1.]

34.04.020 Adoption of rules of practice and procedure—Organizational description—Records of decisions, orders and opinions open to public—Exceptions—Effect of failure to comply. In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions: *Provided, That RCW 34.04.022 shall apply to agencies which have not adopted comprehensive rules of practice and procedure, in accordance with the provisions of this chapter, prior to July 1, 1967.*

(2) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person shall be required to comply with agency procedure not adopted as a rule as herein required.

(3) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions and opinions in contested cases and any digest or index to those orders, decisions or opinions prepared by the agency for its own use. No agency order, decision or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection as herein required. This provision is not applicable in favor of any person who has actual knowledge thereof. [1967 c 237 § 2; 1959 c 234 § 2.]

34.04.022 Uniform procedural rules—Application. On or before July 1, 1967, the code reviser shall add to Title 1 of the Washington Administrative Code a new chapter to be known as chapter 1-08 WAC—Uniform Procedural Rules, which shall become effective July 1, 1967, and shall govern the administrative practice and procedure in and before all agencies which have not adopted comprehensive rules of practice and procedure prior to that date. Except for the numbering thereof, such rules shall be identical with the rules contained in WAC 308-08-010 through 308-08-590 as the same existed on January 3, 1966: *Provided, That in publishing chapter 1-08 WAC the reviser may revise such terms as are used in chapter 308-08 WAC to describe "agency", "department", "board", "commission", and like terms, so as to enable the use of such rules by multiple agencies.*

This section shall not prohibit any such agency from hereafter adopting its own rules of practice and procedure in the manner provided by this chapter, if such agency shall elect to promulgate comprehensive rules on this subject and shall, in the order of adoption, expressly negative any further applicability to such agency of the rules contained in chapter 1-08 WAC. [1967 c 237 § 12.]

34.04.025 Notices of intention to adopt rules—Opportunity to submit data—Noncompliance, effect. (1) Prior to the adoption, amendment or repeal of any rule, each agency shall:

(a) File notice thereof with the code reviser in accordance with section 3(1) of this 1977 amendatory act for publication in the state register, and mail such notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings. Such notice shall also include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon;

(b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) No proceeding shall be held on any rule until twenty days have passed from the distribution date of the register in which notice thereof was contained. The code reviser shall make provisions for informing an agency giving notice under subsection (1) of this section of the distribution date of the register in which such notice will be published.

(3) No rule hereafter adopted is valid unless adopted in substantial compliance with this section, or, if an emergency rule designated as such, adopted in substantial compliance with RCW 34.04.030, as now or hereafter amended. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of RCW 34.08.020, of this section, or of RCW 34.04.030, as now or hereafter amended, after two years have elapsed from the effective date of the rule. [1977 1st ex. s. c 240 § 7; 1971 1st ex. s. c 250 § 17; 1967 c 237 § 3.]

34.04.026 Specific reference to rule-making authority to be included—Alternatives—Format—Request for more specific reference.

(1) In addition to the provisions of RCW 34.04.025(1)(a)(i), every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules:

(a) The most specific reference shall be to a section of law which the rule is implementing, and shall be quoted as follows: "This rule is promulgated pursuant to RCW..... and is intended to administratively implement that statute."

(b) The next specific reference, and one which shall be used only if paragraph (a) of this subsection is not applicable, shall be to that portion of an act which directs an agency to adopt rules and regulations as necessary to implement the act, and shall be quoted as follows: "This rule is promulgated pursuant to RCW which directs that the (agency) has authority to implement the provisions of (name of act or RCW citation)."

(c) The least specific reference, and one which shall be used only if paragraphs (a) and (b) of this subsection are not applicable, is one which indicates that the rule is promulgated under the agency's broad rule-making authority—either in the agency enabling legislation or chapter 34.04 RCW, and shall be quoted as follows: "This rule is promulgated under the general rule-making authority of the (agency) as authorized in RCW _____."

(2) The code reviser is directed to develop a format for placing such specific language in each rule, and agencies shall then comply with the code reviser's direction, and shall include the same in the final rule.

(3) During the promulgation hearings process the public may question whether such rule should have a more specific reference, and the agency shall, pursuant to RCW 34.04.025(1)(b), give consideration to such requests. [1977 c 19 § 2.]

34.04.027 Failure to give twenty days notice of intended action—Effect. When twenty days notice of intended action to adopt, amend or repeal a rule has not been filed with the code reviser, as required in RCW 34.04.025, the code reviser shall not publish such rule and such rule shall not be effective for any purpose. [1967 c 237 § 4.]

34.04.030 Emergency rules and amendments. (1) If the agency finds that immediate adoption or amendment of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, the agency may dispense with such requirements and adopt the rule or amendment as an emergency rule or amendment. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule or amendment as filed with the office of the code reviser under RCW 34.04.040. An emergency rule or amendment shall not remain in effect for longer than ninety days after filing. This section does not relieve any agency from compliance with any law requiring that its rules be approved by designated persons or bodies before they become effective.

(2) The emergency rule published in the register is solely to inform the public of its adoption, and nothing in this section shall be construed to prevent the implementation of the rule upon its filing with the code reviser in accordance with RCW 34.04.040(2). [1977 1st ex. s. c 240 § 8; 1959 c 234 § 3.]

34.04.040 Rules filed with code reviser—Register—Effective dates—Report. (1) Each agency shall file forthwith in the office of the code reviser a certified copy of all rules now in effect and hereafter adopted, except the rules contained in tariffs filed with or published by the Washington public service commission. The code reviser shall keep a permanent register of such rules open to public inspection.

(2) Emergency rules adopted under RCW 34.04.030 shall become effective upon filing. All other rules hereafter adopted shall become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the rule.

(3) The code reviser shall report to each regular session of the legislature on the state of compliance of the agencies with this section. For this purpose, all agencies shall supply the code reviser with such information as he may request. [1959 c 234 § 4.]
Notice of unpublished rules 39 WLR 434.

**34.04.045 Statement of rule's purpose and how implemented—
Contents—Distribution by agency.**

(1) For the purpose of legislative review of agency rules filed pursuant to this chapter, any new or amendatory rule promulgated after the effective date of this act, shall be accompanied by a statement prepared by the adopting agency which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall contain, but is not limited to, the following:

(a) A title, containing a description of the rule's purpose, the name of the agency, the statutory authority for the rule, and any other information which may be of assistance in identifying the rule or its purpose;

(b) A summary of the rule;

(c) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(d) The names of the proponents and opponents of the rule, if any; and

(e) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule.

(2) Upon filing the rule with the code reviser, the adopting agency shall have copies of the statement on file and available for public inspection and shall forward three copies each of the statement to the secretary of the senate and the chief clerk of the house of representatives, who will in turn forward the statement to the majority and minority caucuses and to the appropriate legislative committees. [1977 1st ex. s. c 84 § 1.]

**34.04.050 Code reviser to compile rules, publish bulletin—
County library trustees to keep file—Judicial notice of rules.** (1) The code reviser shall, as soon as practicable after the effective date of this chapter, compile and index all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years.

(2) The code reviser shall publish a monthly register in which he shall set forth the text of all rules filed during the preceding month excluding rules in effect upon the adoption of this chapter.

(3) The code reviser may, in his discretion, omit from the register or the compilation, rules, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if such register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(4) Registers and compilations shall be made available, in written form to state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, to county boards of law library trustees, and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and to other persons at a price fixed by the code reviser.

(5) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations for use and inspection as provided in RCW 27.24.060.

(6) Judicial notice shall be taken of rules filed and published as provided in RCW 34.04.040 and this section. [1977 1st ex.s. c 240 § 9; 1959 c 234 § 5.]

34.04.055 Regulations on filing and form of rules and notices. The code reviser may prescribe regulations for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices. [1967 c 237 § 13.]

34.04.057 Style, format and numbering of rules—Agency compliance. After the rules of an agency have been published by the reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code, and

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code. [1967 c 237 § 14.]

34.04.058 Format and style of rules amending existing sections, adding new sections—Effect of failure to comply. (1) Rules promulgated by an agency pursuant to RCW 34.04.025 or 34.04.030 which amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. In the case of a new section, such shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule shall be forwarded by any agency to the code reviser, nor shall the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the bulletin published pursuant to RCW 34.04.050(2), include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section. [1977 c 19 § 1.]

34.04.060 Petition for adoption, amendment, repeal of rule—Agency action. Any interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within thirty days after submission of a petition, or at the next meeting of the agency if it does not meet within thirty days, the agency shall formally consider the petition and shall within thirty days thereafter either deny the petition in writing (stating its reasons for the denial) or initiate rule-making proceedings in accordance with RCW 34.04.025. [1967 c 237 § 5; 1959 c 234 § 6.]

34.04.070 Declaratory judgment on validity of rule. (1) The validity of any rule may be determined upon petition for a declaratory judgment thereon addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair, the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(2) In a proceeding under subsection (1) of this section the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures. [1959 c 234 § 7.]

34.04.080 Declaratory ruling by agency—Petition—Court review. On petition of any interested person, an agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the superior court of Thurston county in the manner hereinafter provided for the review of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. [1959 c 234 § 8.]

34.04.090 Contested cases—Notice—Hearing—Informal disposition—Record—Findings of fact—Agency's powers. (1) In any contested case all parties shall be afforded an opportunity for hearing after not less than twenty days' notice; but no hearing shall be required until the hearing is demanded unless other statutory provisions or agency rules provide otherwise. The notice shall include:

- (a) a statement of the time, place and nature of the proceeding;
- (b) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon request a more definite and detailed statement shall be furnished.

(2) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(3) Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(4) The record in a contested case shall include:

- (a) all pleadings, motions, intermediate rulings;
- (b) evidence received or considered;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and ruling thereon;
- (e) proposed findings and exceptions;

(f) any decision, opinion, or report by the officer presiding at the hearing;

(5) Oral proceedings shall be transcribed for the purposes of agency decision pursuant to RCW 34.04.110, as now or hereafter amended, rehearing, or court review. A copy of the record or any part thereof shall be transcribed and furnished to any party to the hearing upon request therefor and payment of the reasonable costs thereof.

(6) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(7) Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

(8) Agencies, or their authorized agents, may

(a) administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law,

(b) issue subpoenas as provided in RCW 34.04.105,

(c) rule upon offers of proof and receive relevant evidence,

(d) take or cause depositions to be taken pursuant to rules promulgated by the agency, and no person shall be compelled to divulge information which he could not be compelled to divulge by deposition in connection with a court proceeding,

(e) regulate the course of the hearing,

(f) hold conferences for the settlement or simplification of the issues by consent of the parties,

(g) dispose of procedural requests or similar matters,

(h) make decisions or proposals for decisions pursuant to RCW 34.04.110,

(i) take any other action authorized by agency rule consistent with this chapter. [1967 c 237 § 9; 1959 c 234 § 9.]

1. This statute was not intended to supersede established procedure adopted by University regents under RCW 28.77.120 and 28.77.130. *Nostrand v. Little* (1961) 58 W.2d 111, 361 P.2d 551.

2. This section does not afford a hearing before the director of licenses prior to the suspension of a motor vehicle operator's license, since there is neither any statute providing for such a hearing, nor constitutional right requiring it. *Gnetchi v. State* (1961) 56 W.2d 467, 364 P.2d 225.

Opportunity to be heard on suspension of driver's license. 37 WLR 101.

Right of university professors to hearing. 37 WLR 106.

34.04.100 Contested cases—Rules of evidence—Cross examination. In contested cases:

(1) Agencies, or their authorized agents may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(2) All evidence, including but not limited to records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(4) Agencies, or their authorized agents, may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies, or their authorized agents, may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [1959 c 234 § 10.]

34.04.105 Agency hearings and contested cases—Hearings, oaths, subpoenas, evidence, witnesses—Contempt. (1) In order to determine the necessity or desirability of adopting, amending, repealing, or otherwise revising a rule or proposed rule, agencies may hold public hearings, subpoena witnesses, administer oaths, take the testimony of any person under oath, and in connection therewith, require the production for examination of any books or papers relating to the subject matter of contemplated regulation. Each agency may make rules as to the issuance of subpoenas by the agency or its authorized agents. This subsection shall not preclude the exercise of subpoena powers for investigative purposes granted agencies by other statutory provisions.

(2) In any contested case after service of notice as required in RCW 34.04.090 (1), as now or hereafter amended, agencies, their authorized agents, and hearing examiners hearing the case:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by agency rule, upon a statement showing general relevance and reasonable scope of the evidence sought: *Provided, however,* That such subpoena may be issued with like effect by the attorney of record of the party to the contested case in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the agency except that it shall only be subscribed by the signature of such attorney;

(b) May issue a subpoena upon their own motion.

(3) The subpoena powers created by this section shall be statewide in effect.

(4) Witnesses in an agency hearing or contested case shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, as now or hereafter amended: *Provided,* That the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010, as now or hereafter amended, as to courts. Such fees and allowances, and the cost of producing records required to be produced by agency subpoena, shall be paid by the agency or, in a contested case, by the party requesting the issuance of the subpoena.

(5) If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the agency or

attorney issuing the subpoena may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, and in the case of a rule-making hearing that the requested appearance and testimony are necessary to secure information the expected nature of which would reasonably tend to cause the agency to exercise its rule-making authority, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. [1967 c 237 § 10.]

34.04.110 Contested cases—Procedure when deciding officials have not heard or read evidence. Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law has been served upon the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present written argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. Oral arguments may be heard in the discretion of the agency. [1959 c 234 § 11.]

34.04.115 Consultation by agency officer as to issues. Except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, no hearing examiner or agency or member of an agency presiding in a contested case or preparing a decision, or proposal for decision shall consult with any person or party on any issue of fact or law in the proceeding, except that in analyzing and appraising the record for decision any agency member or hearing examiner may (1) consult with members of the agency making the decision, (2) have the aid and advice of one or more personal assistants, (3) have the assistance of other employees of the agency who have not participated in the proceeding in any manner, who are not engaged for the agency in any investigative functions in the same or any current factually related case and who are not engaged for the agency in any prosecutory functions. [1967 c 237 § 11.]

34.04.120 Contested cases—Adverse decisions and orders—Findings and conclusions. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall

consist of a concise statement of each fact found upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party and to his attorney of record, if any. [1975 c 12 § 1; 1959 c 234 § 12.]

34.04.130 Contested cases—Judicial review. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under the provisions of this 1967 amendatory act*, and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston County, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all parties of record. If a timely petition is filed any party of record not filing or joining in the first petition who wants relief from the decision must join in the petition or serve and file a cross-petition within twenty days after service of the first petition or thirty days after service of the final decision of the agency, whichever period of time is longer. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or superseas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional provisions; or

- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
- (f) arbitrary or capricious. [1967 c 237 § 6; 1959 c 234 § 13.]

34.04.140 Appeal to supreme court. An aggrieved party may secure a review of any final judgment of the superior court under this chapter by appeal to the supreme court or the court of appeals. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases. [1971 c 81 § 87; 1959 c 234 § 14.]

34.04.150 Exclusions from chapter or parts of chapter. This chapter shall not apply to the state militia, or the board of prison terms and paroles, or any institution of higher education as defined in RCW 28B.19.020. The provisions of RCW 34.04.090 through 34.04.130 shall not apply to the board of industrial insurance appeals or the board of tax appeals unless an election is made pursuant to RCW 82.03.140 or 82.03.190. The provisions of RCW 34.04.090 through 34.04.130 and the provisions of RCW 34.04.170 shall not apply to the denial, suspension or revocation of a driver's license by the department of motor vehicles. All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act shall be subject to the entire act. [1971 1st ex.s. c 57 § 17; 1971 c 21 § 1; 1967 1st ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15.]

34.04.160 Legislative review of rules. All rules required to be filed pursuant to RCW 34.04.040 shall be subject to review by the legislature to determine whether such rules are within the intent of the statutes purporting to authorize the adoption thereof. The legislative council may biennially review agency regulations to determine if the legislative intent is being correctly followed. A comprehensive report of said biennial review with recommendations shall be submitted to the members of the legislature ten days prior to the start of each regular session. [1963 c 186 § 1.]

34.04.170 Provisions applicable to licenses and licensing. (1) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(2) No revocation, suspension, annulment, modification, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given reasonable opportunity to show compliance with

all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [1967 c 237 § 8.]

34.04.900 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1959 c 234 § 16.]

34.04.901 Severability—1967 amendatory act. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1967 c 237 § 27.]

34.04.910 General repeal and saving. All acts or parts of acts, whether special or comprehensive in nature, which are inconsistent with the provisions of this chapter, whether in the review procedures which they establish or otherwise, are hereby repealed, but such repeal shall not affect pending proceedings. [1967 c 237 § 25; 1959 c 234 § 17.]

34.04.920 Effective dates of 1959 Act. Sections 2, 3, 4, and 5 of this act shall take effect upon the elapse of one year from the date of its enactment. The other sections of this act shall take effect upon the elapse of six months from the date of its enactment. [1959 c 234 § 18.]

34.04.921 Effective date of 1967 amendatory act. This act shall take effect on July 1, 1967. [1967 c 237 § 29.]

34.04.930 Operation of chapter if in conflict with federal law. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. [1959 c 234 § 19.]

34.04.931 Operation of 1967 amendatory act if in conflict with federal law. If any part of this 1967 amendatory act shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this 1967 amendatory act is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this 1967 amendatory act in its application to the agencies concerned. [1967 c 237 § 26.]

34.04.940 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation. Nothing in the Administrative Procedure Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of the Administrative Procedure Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of the Administrative Procedure Act or its applicability to any agency except to the extent that such legislation shall do so expressly. [1967 c 237 § 24.]

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